

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DISH NETWORK L.L.C.,

Plaintiff,

v.

UNIVISION LOCAL MEDIA, INC.;
UNIVISION NETWORKS AND
STUDIOS, INC.; UNIVISION OF PUERTO
RICO INC.,

Defendants.

UNIVISION LOCAL MEDIA, INC.;
UNIVISION NETWORKS AND STUDIOS,
INC.; and UNIVISION OF PUERTO RICO
INC.,

Defendants/Counterclaim-Plaintiffs,

and

UNIVISION COMMUNICATIONS INC.;
THE UNIVISION NETWORK LIMITED
PARTNERSHIP; UNIVISION IP HOLDINGS,
LLC,

Additional Counterclaim Plaintiffs,

v.

DISH NETWORK L.L.C.,

Plaintiff/Counterclaim-Defendant.

Plaintiff DISH Network L.L.C. (“DISH”), by its undersigned counsel, files this First Amended Complaint for Breach of Contract and Injunctive Relief, and alleges against Defendants Univision Local Media, Inc. (“ULM”), Univision Networks and Studios, Inc. (“UNS”), and Univision of Puerto Rico Inc. (“UPR” and collectively, the “Univision Entities”) as follows:

PARTIES

1. DISH is a Colorado limited liability company with its principal place of business in Englewood, Colorado. DISH’s sole member is DISH DBS Corporation, a Colorado corporation with its principal place of business in Englewood, Colorado.

2. DISH is informed and believes that:

- a. Univision Local Media, Inc. is a Delaware Corporation with its principal place of business in New York, New York.
- b. Univision Networks and Studios, Inc. is a California Corporation with its principal place of business in New York, New York.
- c. Univision of Puerto Rico Inc. is a Delaware Corporation with its principal place of business in New York, New York.

JURISDICTION AND VENUE

3. The Court has jurisdiction under 28 U.S.C. § 1332(a), because there is complete diversity in that the parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. Each of the defendants either does business in New York or has contracted to provide goods and services in New York or has otherwise engaged in conduct sufficient to justify the exercises *in personam* jurisdiction each of over pursuant to N.Y. CPLR §§ 301 and 302. Moreover, under the Agreement, Section 14(e), DISH and the Univision Entities have

agreed that “the federal and state courts located in the city and state of New York shall have exclusive jurisdiction to hear and determine any claims, disputes, actions or suits that may arise under or out of this Agreement and each Party hereby waives its right to make any claim to the contrary.” Pursuant to 28 U.S.C. § 1391(b)(1), venue is proper in this Court because the parties have consented to the venue and, in any event, the Univision Entities maintain their principal place of business in New York City.

NATURE OF ACTION

5. DISH provides subscription satellite television programming to customers throughout the United States. DISH generally does not own the television programming that it distributes to its subscribers but instead licenses the rights to distribute programming. As of March 31, 2017, DISH had approximately 13.528 million residential pay-TV subscribers.¹

6. The Univision Entities are subsidiaries of Univision Communications, Inc. (“UCI”), and each of the Univision Entities produces Spanish-language television programming services, which DISH obtained the right to distribute under a January 9, 2012 Affiliation Agreement (the “Agreement”), as amended effective January 9, 2015 by the “OTT Amendment” to the Agreement. A partial copy of the Agreement is attached hereto as **Exhibit 1**; a partial copy of the OTT Amendment is attached hereto as **Exhibit 2**. As relevant here, the Univision Entities produce Spanish-language television programming services known as Bandamax, De Pelicula, De Pelicula Clasico, Foro TV, Galavision, Unimas (formerly known as Telefutura), Telehit, Univision, Univision Deportes, and Univision tlnovelas. Under the Agreement, each of these comprise a part of what is referred to as a Linear Service, collectively, the “Linear Services.”

¹ This figure includes subscribers to DISH’s Sling TV and Sling International services, which provide television programming via the Internet.

7. Under the Agreement, DISH obtained the right, license, and obligation to distribute each of the Linear Services on DISH's satellite multi-channel video programming distribution system for viewing by its subscribing customers. DISH in turn agreed to pay fixed and per-subscriber fees to the Univision Entities, as set forth in the fee schedule in the Agreement and provisions of the OTT Amendment. Agreement, Ex. F ("Fees"); OTT Amendment, §§ 14-15. At the time the Agreement was executed, DISH and the Univision Entities hailed it as providing Hispanic American television consumers with access to a broad range of content across multiple programming services through DISH.

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This is why consumers of subscription video service often are able to find similarities among product offerings across different subscription television distributors.

9. However, the quintessence of such a licensing and distribution agreement, including the Agreement at issue here, is that the distributor's bargain is less valuable if it can be undercut by free distributions of the same or similar programming. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. One of the significant benefits of the Agreement to DISH is the ability to distribute soccer matches played in Mexico's top level professional league, known as Liga MX (also referred to in the Agreement as the "FLM Primera Division" or "Primera Division"). Soccer (also called football, or futbol) is a major viewing attraction for Hispanic American television audiences – one might compare it to the National Football League in terms of the interest it generates among Hispanic American viewers. And the distribution of Liga MX matches is a significant discussion point in the Agreement, including provisions discussing which of the Linear Services will carry matches and under what circumstances.

11. In clear violation of the Agreement, on information and belief, beginning on February 18, 2017 and continuing to the present, the Univision Entities and their affiliates have licensed the Liga MX matches comprising part of the Linear Services to be distributed live through free internet and wireless cellular distribution networks via Facebook Live, a free streaming internet and cellular wireless application-based service offered by Facebook, Inc. On information and belief, the Liga MX streaming broadcasts distributed on Facebook Live are produced in the same control room, with largely the same production crew, equipment, and infrastructure, using the same video feed as the broadcasts distributed by DISH. The only difference is that the Facebook Live broadcasts are in English, which is accomplished by the Univision Entities and their affiliates using a different audio path and a switcher that replicates the Spanish-language graphics shown on DISH so that they appear in English. And the Liga MX matches shown on Facebook Live are attributed to the Univision Deportes brand, one of the television programming services expressly contemplated by the Agreement as included among the Linear Services. A media report carried on UCI's website as of the date of this Complaint

(**Exhibit 3**), concerning the licensing deal with Facebook Live (which also included the broadcast of Major League Soccer matches), makes this clear:



12. In other words, the Univision Entities and their affiliates are distributing a part of the Linear Services free of charge through the internet and wireless cellular service providers in violation of the Agreement. This material breach of the Agreement has caused actual harm to DISH. It has undermined the value of DISH's licensing and distribution deal with the Univision Entities, by making covered content available for free through a third-party distributor. And it has and will undoubtedly cost DISH profits and the goodwill of its subscribers and potential subscribers, who are less likely to purchase DISH services or the necessary subscriptions to access its Liga MX content, since games can be viewed for free on the internet or through a wireless cellular provider. DISH will never recover at least some of these lost opportunities. The Univision Entities have also failed to provide to DISH Linear Services content to which it is entitled under the Agreement at no charge – that is, the English-language audio and graphics.

FACTUAL BACKGROUND

DISH Licenses To Distribute The Linear Services

13. As relevant here, the Agreement, [REDACTED]

[REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

[REDACTED]

Thus, the Agreement was in place and in effect when, in February 2017, the Univision Entities and their affiliates licensed Linear Services content to be broadcast for free via Facebook Live, in violation of the Agreement.

16.

[REDACTED]

[REDACTED]

[REDACTED]

17.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. In short, the Agreement covers the Liga MX feeds and components being provided by the Univision Entities and their affiliates to be distributed on Facebook Live for free.

19. The Agreement expressly prohibits the Univision Entities from allowing the Linear Services to be distributed for free via the internet or a wireless cellular service provider.

[REDACTED]

[REDACTED]

[REDACTED]

20.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Distribution via Facebook Live does not qualify as any of these permissible methods under the Agreement.

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23. [REDACTED]

[REDACTED]

[REDACTED] Thus, the Univision Entities are prohibited by the Agreement from distributing the Linear Services and any part thereof via Facebook Live.

24. There are exceptions to these prohibitions, but none of them applies here. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Neither of these exceptions applies, because the Univision Entities and their affiliates are distributing Liga MX matches live via Facebook Live.

25. In addition to violating the distribution restrictions, UNS has also failed to deliver promised content to DISH. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. [REDACTED]

[REDACTED]

[REDACTED]

The Univision Entities And Their Affiliates Have Repeatedly And Openly Violated The Agreement By Allowing Linear Services To Be Distributed On Facebook Live

27. On February 13, 2017, UCI posted the following announcement on its website (Exhibit 4):

Univision Communications Inc. (UCI), the leading media company serving Hispanic America, today announced a deal that will bring the live stream for select matches from Univision Deportes' comprehensive portfolio of Liga MX, the most-watched soccer league in the U.S., directly to fans in English via Facebook Live this season. Kicking off Saturday, February 18 and continuing throughout 2017, fans can stream Liga MX matches in the U.S., in real-time on the Univision Deportes Facebook Page and via Facebook's Video tab.

28. According to the announcement, "Univision Deportes will stream 46 Liga MX matches including playoff games in 2017 via Facebook Live." The announcement recognized the tremendous value of the Univision Deportes Liga MX distribution rights:

Liga MX, the Mexican soccer league, consistently attracts more viewers than all other soccer properties, including the English Premier League. Univision Deportes, the undisputed home of soccer in the U.S., has the most comprehensive portfolio of exclusive Liga MX rights.

29. The announcement also acknowledged the obvious – that the Facebook Live matches were simply television programming distributed via the internet:

TV options have evolved from broadcast to cable to SVOD. Now Facebook represents the next wave of TV and, given its scale, they are an ideal partner to distribute our Liga MX matches in English.

30. Finally, the announcement made clear that "Univision Deportes" – the same brand identified in the license to DISH as part of the Linear Services – is partnering with Facebook Live for the Liga MX matches:

Univision Deportes, the destination of choice for soccer fans in the U.S., is the award-winning multiplatform sports division of UCI that includes UDN, the No. 1 Spanish-language sports network in the U.S. It is the home of Liga MX, the highest-rated club soccer

league in the U.S. across all networks, and it carries the rights to 17 of the 18 teams in the league.

31. Since Univision's announcement, on information and belief, at least the following Univision Deportes (and Linear Services) matches have been distributed for free via Facebook Live through cellular wireless-based applications and on the internet:

<u>Date</u>	<u>Match</u>
February 18, 2017	Guadalajara vs. América
February 25, 2017	América vs. Cruz Azul
March 5, 2017	Pumas UNAM vs. Santos Laguna
March 18, 2017	Guadalajara vs. Veracruz
April 1, 2017	América vs. Monterrey
April 9, 2017	Santos Laguna vs. Pachuca
April 15, 2017	Tigres UANL vs. Pumas UNAM
April 23, 2017	Santos Laguna vs. América
April 29, 2017	América vs. Atlas
May 6, 2017	Necaxa vs. Guadalajara
May 14, 2017	Guadalajara vs. Atlas
May 18, 2017	Toluca vs. Guadalajara

32. About six weeks into distributing games via Facebook Live, Univision Deportes Senior Vice President Olek Loewenstein gave an interview, subsequently posted to UCI's website (**Exhibit 5**), in which he made clear that the content provided to Facebook Live is part and parcel of the Linear Services, because the Facebook Live production and feed are the same that are components of the Spanish-language broadcasts distributed by DISH:

The goal is to [operate out of] a single control room. The moment I need to go to a separate control room, the costs just get out of hand. In the case of Facebook, we are delivering it straight to an encoder that goes to their backend, and they publish it. It doesn't affect us much in terms of production crew, equipment, and infrastructure. Facebook wants [the stream] to be produced in the highest possible quality. Given that we are already producing [the game] for HD TV or large digital displays.

Facebook is more than happy with the quality of our output. Obviously, in the case of Liga MX, we're [streaming to Facebook Live] in English. So the announcers are different, and the graphics are different. For the announcers, it [requires] just a different audio path. For the graphics, we have a split: every time you click a button on the switcher to present a graphic that is done in Spanish, it replicates the same thing on the English-language feed with translation. The only element that we are duplicating is an audio operator for the English announcers.

33. In other words, the content distributed to Facebook Live stems from the same control room, with largely the same crew, equipment and infrastructure, and the same feed and underlying graphics, as comprises the part of the Linear Services covered by the Agreement. These components and feeds are expressly covered by the Agreement, and the Univision Entities are prohibited from allowing them to be distributed for free via Facebook Live. Moreover, the English-language audio path and the derivative English-language graphics are also content covered by the Agreement, which the Univision Entities are required to provide to DISH as part of its licensing and distribution rights, at no additional cost.

Univision Also Violated the [REDACTED] Provision of the Agreement

34. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

35. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. On November 30, 2016, DirecTV launched the DirecTV Now service. The El Rey network was included as part of the most expensive subscription package offered through the DirecTV Now service.

38. Based on the inclusion of El Rey in DirecTV Now's most expensive package only, DISH suspected that Univision had permitted DirecTV [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] If DISH were permitted to [REDACTED], the license fees that DISH owed to Univision would decrease.

40.

[REDACTED]

41.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

42.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

43.

[REDACTED]
[REDACTED]

44.

[REDACTED]
[REDACTED]
[REDACTED]

Univision Failed to Provide DISH With [REDACTED] of Liga MX Matches

45.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

46. [REDACTED]

[REDACTED]

[REDACTED]

47. On June 30, 2018, DISH's deal to carry three Univision networks—the Univision service, the Galavisión service, and the UniMás service—expired, but DISH's right to carry certain other Univision networks, including Univision Deportes, did not. When DISH's right to distribute those services expired, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

48. Of the eighteen teams competing in the Liga MX, two stand out as the most popular and historically successful: Club de Fútbol América S.A. de C.V. ("Club América") and Club Deportivo Guadalajara ("Chivas").

49. Club America is the most popular Liga MX team. Club América is based in the largest city in Mexico (Mexico City) and the attendance at Club América home matches is among the highest in the Liga MX.

50. Club América is also the most successful team in the Liga MX historically. It has won a record thirteen league titles (including the most recent 2018 championship), and a record seven CONCACAF Champions' Cups in international play.

51. To analogize to American sports, Club América is to Liga MX what the New York Yankees are to Major League Baseball.

52. The second most successful team in Liga MX history is Chivas. Based in Guadalajara, Chivas has won 12 league titles—most recently in 2017. Chivas is widely regarded as the second most popular Liga MX team.

53. Chivas and Club América are bitter rivals. The annual match between Chivas and Club América in Mexico City (known as “El Súper Clásico”) is among the most anticipated and the highest attended Liga MX matches of the year.

54. If Club América is akin to the New York Yankees, Chivas would be the Boston Red Sox.

55. Because Club América and Chivas are the two premier teams in the Liga MX, televised matches involving Club América and/or Chivas are frequently among the most popular among Liga MX fans.

56. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

57. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

58. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

59. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

60. [REDACTED]

[REDACTED]

[REDACTED]

FIRST CAUSE OF ACTION AND CLAIM
(Breach of Affiliation Agreement And Terms And Conditions)

61. DISH incorporates the allegations in Paragraphs 1-60 as though fully set forth herein.

62. DISH and the Univision Entities are parties to a contract – the Affiliation Agreement and its Terms and Conditions and Exhibits thereto, as modified by the OTT Amendment – under which the Univision Entities licensed to DISH the distribution rights to the

Linear Services, and agreed not to allow the Linear Services or any part thereof to be distributed for free on the internet or any cellular wireless service as described herein. DISH has performed all of its material obligations under the Agreement and the Terms and Conditions.

63. Under the express terms of the Agreement and Terms and Conditions thereto, the Univision Entities are prohibited from distributing the Linear Services or any feed or component thereof via the internet or any cellular wireless service, as described above, and must provide to DISH all feeds, formats, components, and secondary audio feeds of the Linear Services.

64. The Univision Entities and their affiliates have allowed to be distributed for free via the internet and cellular wireless services – specifically, via Facebook Live – the Linear Services and feeds and components thereof, and have failed to provide to DISH all feeds, formats, components, and secondary audio feeds of the Linear Services, in violation of the Agreement and Terms and Conditions thereto.

65. As a result of these breaches by the Univision Entities, DISH has suffered actual damages, including, but not limited to:

a. Fees paid by DISH to the Univision Entities and their affiliates for licensing rights that have substantially diminished in value as a result of parts of the Linear Services being made available for free via Facebook Live;

b. Lost revenue and profits from subscribers who have foregone subscribing to DISH's services or canceled their subscriber agreements with DISH because (1) the Univision Entities have allowed parts of the Linear Services to be distributed for free via Facebook Live, or (2) as a result of the Univision Entities' failure to provide DISH with all of the content to which it is entitled free of additional charge, specifically the English-language audio and graphics components of the Linear Services made available via Facebook Live;

c. Damage to DISH's goodwill among customers or potential customers who will or have learned that DISH charges for video content that is available for free on the internet.

66. The acts by the Univision Entities constitute a material breach, which cannot be cured.

SECOND CAUSE OF ACTION AND CLAIM
(Breach of Affiliation Agreement And Terms And Conditions)

67. DISH incorporates the allegations in Paragraphs 1-66 as though fully set forth herein.

68. DISH and the Univision Entities are parties to a contract – the Affiliation Agreement and its Terms and Conditions and Exhibits thereto, as modified by the OTT Amendment.

69. [REDACTED]

70. [REDACTED]

71. [REDACTED]

72. As a result of these breaches by the Univision Entities, DISH has suffered actual damages, including, but not limited to, per subscriber license fees paid to Univision [REDACTED]

THIRD CAUSE OF ACTION AND CLAIM
(Breach of Affiliation Agreement And Terms And Conditions)

73. DISH incorporates the allegations in Paragraphs 1-72 as though fully set forth herein.

74. DISH and the Univision Entities are parties to a contract – the Affiliation Agreement and its Terms and Conditions and Exhibits thereto, as modified by the OTT Amendment.

75. Under the express terms of the Agreement, Univision [REDACTED]

76. Beginning in July 2018, Univision failed [REDACTED]

77. As a result of these breaches by the Univision Entities, DISH has suffered actual damages, including, but not limited to:

a. Fees paid by DISH to the Univision Entities and their affiliates for licensing rights to Univision Deportes that have substantially diminished in value as a result of

[REDACTED];

b. Lost revenue and profits from subscribers who have foregone subscribing to DISH's services or canceled their subscriber agreements with DISH because [REDACTED]

[REDACTED];

c. Damage to DISH's goodwill among customers or potential customers who watch Liga MX matches on DISH's services.

78. The acts by the Univision Entities constitute a material breach, which cannot be cured.

PRAYER FOR RELIEF

WHEREFORE, DISH prays for relief on its First Claim as follows:

1. Monetary damages in an amount in excess of \$75,000;
2. A permanent prohibitory injunction restraining the Univision Entities and their affiliates from allowing the Linear Services and any component or part thereof to be distributed via Facebook Live or for free via other internet or wireless cellular service; and
3. Any other such relief as the Court deems just and proper.

Dated: San Francisco, California
January 18, 2019

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Pro Hac Vice Application To Be Filed)